IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4668 OF 2005

WITH

CIVIL APPLICATION NO.4669 OF 2005

IN

FIRST APPEAL (STAMP) NO.23292 OF 2005

IN

B.C.S.C.SUIT NO.218 OF 2001

Shri Shubhash Sadashiv Karkhanis ...Applicant

Versus

Larsen & Toubro Limited & Ors. ...Respondents

.....

Mr.A.V.Chatuphale for Applicant.

Respondent No.2 present for himself &

for Respondent No.3.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JANUARY 23, 2006.**

**P.C.**

1. Heard Counsel for the Applicant and Respondent No.2 who appears in-person for himself

and for Respondent No.3. This Application is for condonation of delay in filing First Appeal. Delay is over 761 days.

2. The First Appeal takes exception to the Judgment and decree dated 31st July 2003 dismissing the suit preferred by the Applicant for the following reason:

> "Plaintiff and advocate absent. Affidavit of service showing service of writ of summons upon Defendants not filed. The direction given on the last date not complied. Hence the following order:
>
> ORDER
>
> 1. Suit dismissed in default of Plaintiff to appear, to prosecute the suit claim and to take steps to serve the Defendants.
>
> 2. Interim order if any operating stands vacated.
>
> 3. R & P be sent to R/dept."

3. It is the case of the Applicant that the Applicant was unaware of this order till he received communication from Defendant No.1 dated 16th April 2005. The Applicant thereafter took out Notice of Motion No.2272 of 2005 before the Trial court sometime in June 2005. The Trial Court has

dismissed that Notice of Motion on 11th July 2005 for the reasons recorded separately. The Applicant has approached this court by way of First Appeal on 16th September 2005. In the present application, statement has been made that no reasons have been recorded by the Trial Court for rejecting the Notice of Motion No.2272 of 2005. This stand taken on behalf of the Applicant is bellied by the copy of the order dated 11th July 2005 passed by the Trial Court produced by the Applicant at page 7. It clearly mentions that for the reasons separately recorded, the order of dismissing Notice of Motion has been passed. Even at the time of hearing of this application, the Counsel for the Applicant maintained the stand that no reasons have been recorded by the Trial Court for dismissing the said Notice of Motion.

4. Be that as it may, the question is: whether delay of 761 days in filing of the First Appeal against the order dated 31st July 2003 should be condoned? According to the Applicant, the Applicant had no knowledge about the order passed by the Trial Court dismissing the suit dated

31st July 2003. The Applicant submits that althroughout the Applicant was pursuing proceedings taken out by him diligently before the Trial Court. The Notice of Motion taken out by the Applicant was disposed of on 8th May 2001 and the Applicant had no intimation about the suit being listed on 31st July 2003. In the circumstances, the Suit went by default on 31st July 2003. The Applicant, however, submits that the Applicant acquired knowledge of dismissal of the suit only on receiving communication from Defendant No.1 dated 16th April 2005. Even accepting this claim of the Applicant as it is, it is seen, as has been rightly found by the lower Court in the order dated 11th July 2005 (detailed reasons recorded for dismissing Notice of Motion No.2272/05) - that the said communication was received by the Applicant on 29th April 2005. The Applicant, in turn, wrote to the Defendant No.1 seeking extension of time till 15th June 2005. The Defendant No.1 Company in response, by letter dated 13th May 2005, called upon the Applicant to produce necessary prohibitory order issued by the Court of competent jurisdiction. It is not in dispute that inspite of this, the Applicant took out Notice of

Motion in June 2005, almost nearly two months from the date of knowledge of passing of order dated 31st July 2005 on receipt of communication dated 16th April 2005 from the Defendant No.1 on 29th April 2005. No cause, much less, sufficient cause is shown for the inaction for about two months.

5. Be that as it may, the Court below has rejected the Notice of Motion by detailed order. The Applicant, however, did not produce copy of that order before this Court. Instead, claimed in the application as well as at the hearing that no reasons have been recorded by the Trial Court, which position is falsified from the reasoned order produced by the Respondent No.2 along with the affidavit. Interestingly, the Notice of Motion taken out by the Applicant came to be rejected on 11th July 2005, whereas, the First Appeal has been filed only on 16th September 2005. Once again, no cause much less, sufficient cause is shown for this inaction. In any case, it is certain that the Applicant has not approached this Court with clean hands.

6. There is no satisfactory explanation forthcoming as to why the Applicant took over sixty days for filing of the First Appeal. In my opinion, the Applicant has not made out sufficient cause for showing any indulgence. Besides, the Applicant has not approached this Court with clean hands and has made wrong statement on affidavit that no reasons have been recorded by the Trial Court in its order dated 11th July 2005.

7. In the circumstances, no discretionary relief can be granted to such litigant. Hence, this Application is dismissed with cost quantified at Rs.5,000/- (Rupees Five Thousand) to be paid to the Respondents 2 and 3 within two weeks from today.

8. In view of the above order, nothing survives for consideration in Civil Application No.4669 of 2005. The same is disposed of.

A.M.KHANWILKAR, J.